1957.

File No. O. Merged States/51 Pt. I

Legal Department

A **BRANCH**

K

Subject: Opinions regarding

Merged States

(For Subsequent pps. pl. see pt: II)

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File No. O. Merged states/51

Pt. I

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Gen. 194 e.

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...er of States: ...nether order made by the Nawab of Janjira on 17.2.48 can be interferred with.

The question for the consideration of the R.L.A. is whether Government can refuse to recognise the order made by the Nawab of Janjira on 17.2.1948, making a permanent grant of the bungalow, the land within the compound and the chawl near the residential quarters of the Chief Medical Officer, Jajira, in favour of one Siddi Yakub Khanzada. It is true that the order was made by theNawab only a few days before the merger of the State which took place on 2.3.1948. But it seems from the order dated 8.5.1948, made by the Chief Administrator and Collector of Kolaba that this was one of the cases discussed by the Collector with the Chief Secretary who is stated to have agreed that the Nawab's order should be approved and not interferred with. The order issued by the Chief Administrator with the consent of the Chief Secretary would amount to ratifying the grant made by the Nawab and it would not be proper to interfere with it at this stage.

Remembrancer of Legal Affairs.

U.R.to P. & S.D; No. 20 dated the 2nd Jan., 1952.

SSM / 24/1/56

Office of the R.L.A.

Bombay Merged States (Laws) Act, 1950.

Baroda Watan Rules, 1932.
Permission to sell watan lands situate at Vyara, District Surat.

Under section 5 of the Bombay Merged States (Laws) Act, 1950 (Bom. I V of 1950) read with the Fifth Schedule thereto the Baroda Watan Rules, 1932, are continued in force in the area of the merged Baroda State as if the Rules were enacted by the State legislature. Under sub-rule (1)(a) of rule 38 of these rules watans shall not be mortgaged, sold or otherwise alienated without the sanction of the Government. That sub-rule thus contempl tes that watans can be sold with the sanction of Government. The next point to be considered is whether any conditions can be attached by Government when sanctioning the sale of watan lands. There is no specific provision in the Rules on this point. But obviously the Rules did not contemplate that watan lands should be sold as such. Rule 38 seems to imply that Government can attach conditions while sanctioning the sale. There would therefore appear no objection to giving effect to the orders proposed by H.M.L.A.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 864, dated the 15th January 1951.

Office of the R.L.A.

The Financial Adviser in paragraph 2 of his note (p. 16) has referred to R.L.A's opinion No. 419-Confl., dated the 12th June 1950, in connection with Major Soman's case. In that opinion reliance was placed on article VIII of the agreement between the Governor General and the Maharaja of Baroda. It appears that a somewhat similar condition also finds place in the agreement with the Rulers of Deccan States. Please see paragraph 7 of Shri Menon's D.O. which is to be treated as part of the merger agreement. That paragraph provides that it is intended that members of the public service on conditions similar to what they were entitled to beforethe 1st December 1947, as changed circumstances may permit. It is seen from the statement at page 3 of the correspondence section that Capt. Anand Rao was-acting acting as Assistant Accountant General in th scale of Rs. 250-10-450. The pay scale of the post of first grade Auditors appears to be Rs. 200-10-300. Even on his appointment as first grade Auditor it would appear therefore that Capt. Anand Rao's conditions of service would be adversely affected. However there would be no objection to his being appointed to that post if he accepts the conditions specified in the concluding paotion of paragraph 2 of the Development Department office note dated the 5th January 1951.

Remembrancer of Legal Affairs.

U.O. to ...., No. 103-Confl, dated the 30th January, 1953.

No. 1111

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 1), 17th January, 1951.

From:

Shri P.V.Lad, I.C.S.,
Remembrancer of Legal Affairs,
Bombay.

To

The Joint Director General of Shipping,
"Commerce House",
Currimbhoy Road,
Ballard Estate, Fort,
Bombay.

Subject:- Port Okha.

Sir,

With reference to your letter No. 21-GD(1)/50, dated the 28th January, 1950, and subsequent reminders, I have the honour to enclose herewith my opinion on the subject noted above.

Yours faithfully,

Remembrancer of Legal Affairs.

SM / 24/7/56.

Okha Port Rules;

Bombay Merged States (Laws) Act, 1950 - section 5.

Office of the R.L.A.

Under the provisions of section 5 of the and ethefifth schedule to the Bombay Merged States (Laws) Act, 1950, the Okha Port Rules have b en specifically continued in force as if they are enact d by the State Legislature and the powers conferred on the Board and on the Government are exercisable accordingly.

2. The objection raised by the British India Steam Navigation Co. Ltd. at page 35 ante relates t o the revised charges fixed under Government Notification, Revenue Department No. 1209/49 dated 7-11-1949 published on 11-11-1949. This notification was issued under rules 12 and 13 of the Rules. If any of the provisions of the said notification are inconsistent with the provisions of the Indian Carriage of Goods by Sea Act, 19_5 (Which has been extended to the Port of Okha), the Okha Harbour Board can suitably amend the notification with the sanction of the Government under rule 14 of the Rules.

Memorandancer of Legal Affairs.

SSM / 24/7/56.

Legal Department.

The order of the Maharaja of Rajpipla dated 6th April 1944 granting the monopoly to Shri Contractor to run the theater and directing that electricity should be supplied to the theatre from the State Power House at half the rate does not appear to have been issued under any provision of law. As stated by the P. & S.D. in their office note such concessions cannot be held to be binding on the successor Government. After a cession of territory the only enforceable rights against the Soverein are those enforced by him after the cession either by agreement, express or implied, or by legislation (Secretary of State Vs. Bai Rajbai, 17 B.L.R. 730 (P.C) etc.). Presumably there is nothing in the agreement of merger between the Government of India and the Maharaja of Rajpipla which would suggeste that the the right which Shri Contractor derived under the Maharaja's Order of 1944 is recognized. In these circumstances Shri Contractor cannot claim to be supplied energy at the concession rate and would be bound by the rates revised by the P.W.D.

Additional Secretary to Government.

T.R. to P. & S.D. No. 2781, dated the 13th February 1951.

S.M / 24/7/56.

Office of the R.L.
R.L No 3195 of 15/2/15

The question for consideration in this case is whether the Temple of Shri Ambaji and other temples which are adjacts to it together with the town of Ambaji and lands dedicated to the said temples should or should not be recognised as the private property of the ruler of the old Danta State. It is true that the shrines and the lands said to be dedicated to them are situate within the area which was formerly within the limits of the Danta State. It also appears that certain lands dedicated to the Shrines are outside the State. In the Kahi Kantha Directory it is stated that the shrine of Shri Ambaji was established by an ancestor of the Maharana of Danta in the 11th Century. In th Bombay Gazetteer it is stated:

"The Rana of Danta, ranking in the second class, enjoys special influence having in his territory the famous shrine of Amba Bhavani where in August, September, October and November pilgrims of all ranks meet, their costly offerings coming in the end into Rana's exchequer----

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The officer of officiating priest of Amba Bhavani is farmed out to certain sudich Brahmins of Sidhpur. The Rana of Danta as the custodian of the temples receives all the offerings as well as fe s from pilgrims who have to show a pass before entering the shrine. The Rana of Sirohi who formerly held a share in the temple revenues, has giv n it up on the ground that non but the members of religious orders can with propriety share in the offerings of a temple."

2. The Administration Reports of the Dant for the years 1894-95, 1895-96 and 1899-1900 refer to the income of the temple as the private income of the Maharana. It is stated: "The Maharana is believed to derive a considerable private income from the shrine of Amba Bhavani of which he is the hereditary custodian and guardian and the offerings to which he has an ancient right to appropriate." The subsequent administration reports of the Danta State are silent on the point and although the mention is made therein of the Ambaji Temple and other adjunct temples as notable places of interest in the State, it is not repeated that they are the private property of the ruler. On the other hand these reports make mention of a medical dispensary conducted by the State in the town of Ambaji which is deemed to be one of the properties dedicated to the temple. It also appears that a pilgrim tax was being levied on all visitors to the shrines. In the note submitted by the Maharana of Danta and appended to the letter of the Government of India dated 27th November 1950 reference has been made to various proceedings of civil courts in British India in which the nature of this right to the Shrine and the propry dedicated to it has been considered. The last of such proceedings appears to be First Appeal No. 345 of 1936 decided by the Bombay High Court on 20th February 1939. In the plaint in the suit out of which the said appeal arose, the ruler has admitted that he claimed the lands in dispute as the manager of the temple. There was no allegation in that suit that the temple and the lands

lands appurtenant thereto were of the private ownership of the Lord Macklin J. in that appeal has held that the ruler was only the manager of the temple.

3. It is not denied that the shrines are religious and charitable endowments. The public had admission to the shrines though on payment of certain fees and offerings were accepted for the benefit of the shrines from the public. The pilgrim tax which was being levied on all visitors was obviously in his capacity as the ruler of the State and not as a mere custodian or manager. The claim of the ruler of Danta that the shrines are of his private ownership is not sustainable. The system of administration of the Danta State was one of absolute rule. In the several administration reports it is stated that the administration of the State was carried on under the personal guidance and direction of the Darbar. In the case of such system there would not be any difference or distinction and no such distinction could be drawn between the private property of the ruler and the public property of the State, as it would be in the case of a State which had constitution (see Elphinstone v. Bedreebhund, 1 Knapp P.C. 318, I.L.R. 10 Bom. 118). Moreover, from the report of the Officer on Special Duty dated 15th April 1948, it appears that income from tax or fee realised from pilgrims to the Ambaji and adjunct shrines was taken into account in determining the privy purse to be given to the ruler. The Privy purse is fixed on the income of the State or the ruler in his capacity as a ruler. The private income of

income of the ruler was not to be taken into consideration. If the ruler has accepted the privy purse on this basis, it is not open to him to contend that the income from the shrines is his private property. He cannot appropate and reprobate at the same time. Moreover, as pointed out by the Government of India, the right of the ruler to be the custodian and manager of the shrines flowed from his official position as the ruler and head of the Danta State. All his rights as a ruler have been surrendered to Government by the merger agreement. The ruler, therefore, cannot claim back the said rights or contend that any of them belong to him in his personal capacity.

4. The fact, therefore, that the ruler appropriated the offerings to his own use cannot be held as leading to the conclusion that the shrines were of his private ownership. Even if the ruler was acting as a manager of the shrines hereditarily, this Government would not, in law, be bound to recognise him as such after the merger of the State. In Syed Asrar Ahmed v. The Durga Committee of Ajmer (49 Bom. L.R. 235) the Judicial Committee of the Privy Council held that the rule of law by which Government is not bound to recognise any tenures in a state which has merged or was awarded or ceded, is applicable to an office like the Mutawali of a shrine and such office is within the disposition of the new sovereign. There is nothing in the merger agreement which would compel Government as to recognise the ruler as the custodian and manager of the shrines. The view taken by the Government of

of India in their letter of 27th November 1950 is correct. There would, therefore, be no legal objection to inform the ex-ruler of Wanta, with the consent of the Government of India, that, unless he agrees to the arrangement proposed by the Government of Bombay regarding the management of the shrines, the Bombay Government would not recognise him even as the Chairman of the proposed trust. The Maharana may also be informed that he can in law be called to account for all income which he received in his capacity as the custodian or manager of the temples.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 3674 dated the 2nd March 1951.

S.M / 24/7/56.

Legal Department.

The view taken by the Education Department is correct. Since the assignment is to expire in 1953-54 and the assignment done in favour of the Accountant General, Baroda would be deemed to be in favour of the Accountant General, Bombay, it does not appear necessary to take a fresh assignment.

Additional Secretary to Government

U.R. to L.D. No. 4240, dated the 15th March 1951.

GSS / 24/7/55.

Office of the R.L

So far as the privy purse is concerned, the rule of primogniture may be held to govern succession to the same as such rule governed the succession to the Gadi of the Talukdar. But in that case proper provision will have to be made for the maintenance of the Thakor's widow and daughters. In the case of the property which is guaranteed as the private property of the Thakor, the succession to it may be governed by the ordinary Hindu Law unless such property was, by the custom or useage in the family, reserved for the ruling Thakor, If the Thakor was not a joint Hindu family, the widow will be entitled thereto during her life and after her death the daughters can succeed.

Remembrancer of Legal Affairs.

U.O. to F. & C.D. No. 4171, dated the 14th March 1951.

S M / 24/7/56.

Legal Department.

The statement made in Home Department note at page 1 ante does not appear to be correct. The Government of Bombay has already passed an order on 3rd April 1950, providing for the disposal of cases (civil, criminal and revenue) pending immediately authorities in the areas which were transferred to the State of Bombay (vide G.R. P. & G.A. No. 2755/46-F dt. 3rd April 1950). By the said order, such pending cases have been transferred for disposal to the respective courts and athorities in the State of Bombay having jurisdiction over the areas concerned. Presumably a similar order has been passed by the Hydrabad State.

Secretary to Government.

U.M. to .D. No. 50.0, dated the 29th March 1951.

S.N / 24/7/56.

L.D. R.I. No. 2738 dated 9-2-51.

The question for consideration is the liability of payments on account of the co-ordinated scheme for Locust Control in desert areas of North West India for the attached units of the former Baroda State. The Political and Services Department has stated that the units in question have been merged in the various Districts and as all these units are in the State of Bombay, the liability of payments under the scheme will have to be liquidated by the Government of Bombay as suggested by the Director of Agriculture at p. 71 ante. The question referred to the R.L.A. is for confirming that the liability in question can be legally accepted by the Government of Bombay.

JDH 24/7/56.

Legal Department.

Seen and returned.

Additional Secretary to Government.

Ltr. to A. & R.D., No. 5495, dated the 5th April 1951.

S M / 24/7/56.

Office of the R.L.A.

The first question for consideration is whether the Sangli Ganpati Sansthan Act, 1940 (XVIII of 1940) under which the City Survey of Sangli and Sangliwadi was managed by the Ganpati Manager under the State regime can be deemed to be still in force after the merger of the Sangli State and the application of Indian Laws to the merged area. That Act had been enacted to provide for the management of the Shree Ganpati Panchyatan Sansthan which is a private religious trust. The continuance of the operation of this Act was considered by the R.L.A. in his opinion No. 149 dated 3rd January 1951 where it has been held that as the Act provides for the management of a single private religious trust, it must be taken to have been continued andtreated as still operative notwithstanding the fact that it has not ben mentioned in the Fifth Schedule to the Bombay Merged States (Laws) Act, 1950 (Bom. IV of 1950).

2. The next question for consideration is whether the provisions about city survey as in force in Bombay State will now be deemed to be applicable to the merged areas in question. Under section 3 of the Bombay Merged States (Laws) Act, 1950, read with the First Schedule thereto, the provisions of the Bombay Land Revenue Act, 1879, now apply to the merged area of Sangli. There is no specific provision in the Sangli Ganpati Panchayatan Sansthan Act, ~~1944~~ 1940, as regards survey of villages. On the contrary section 20 of that Act provides that save as thereafter provided the grant of

the villages of Sangli

Sangli and Sangliwadi will be governed by the provisions of the Bombay Land Revenue Code, 1879 as applied to the Sangli State, and all other land laws in force in the State. The proviso to that section excepts the application of the Code etc. which is repugnant to the status and the rights of Shree Ganpati Panchayatan Sansthan. There is therefore nothing to suggest that the provisions in the Bombay Land Revenue Code, 1879 about survey of lands are excluded in the application of the Code to the waqf areas in question.

3. The next question is whether the order passed in Government Resolution, Political Department, No. 1666, dated 9th April 1979 (p. 7 ante) of discontinuance of the management of the revenue of Sangli and Sangliwadi by the Ganpati Sansthan can be said to be in force after the enactment of the Sangli -Ganpati Panchayatan Sansthan Act, itself in 1940 and the application of the provisions of the Bombay Land Revenue Code, 1879, to the grant to the Sansthan, the revenue administration in respect of the Deosthan villages can be considered to be of the nature of "an imperium in imperio" within the meaning of that expression in the Government Resolution. It will be seen from para. 2 of the Government Resolution that as the revenue appertained to a grant for the use of God, the separate management of the grant is now governed by the Sangli Ganpati Panchayatan Sansthan Act of 1940. The orders in the said Government Resolution cannot therefore be said to be surviving now.

4. The last question is whether the Sangli Ganpati Panchayatan Sangthan is entitled to receive payment of the costs of introducing City survey in the two villages in question before parting with the management of the City Survey. Under section 20 of the Sangli Ganpati Panchayatan Sansthan Act the provisions of the Bombay Land Revenue Code, 1879, as applied to the Sangli State, were made applicable to the two villages of Sangli and Sangliwadi. The City Survey was introduced in these two villages before the Sangli State merged in the Bombay State. Consequently, the City Survey introduced in the two villages must presumably have been done under the provisions of the Bombay Land Revenue Code as applied to the two villages. It is true that under section 216 of the Bombay Land Revenue Code before it was amended by Bombay Act XLV of 1947, there was no provision for the recovery of the costs of the introduction of the servey from the Inamdars of the alienated villages. Ordinarily, the cost of such survey should have been therefore, borne by the Sangli State. However, it appears that the cost of this city survey of the two villages was borne by the Sangli Ganpati Panchayatan Sansthan and not by the Sangli State. But this fact would not make any difference in the legal position in respect of the introduction of the the City Survey in these two villages. Under section 216 of the Land Revenue Code as amended by Bombay Act XLV of 1947, the Inamdars are

Inamdars are ultimately made liable to bear the costs of survey. In view of this provision and in view of the fact that the Sangli State did not choose to bear the costs of the city survey of the two villages, it appears that this Government would not be liable to reimburse the costs of the city survey as demanded by the Sangli Sampati Vyavastha Vyavasthan. Since the city survey introduced in these two villages is introduced under the provisions of the Bombay Land Revenue Code, the Sampati Vyavasthan is not entitled to the management of the survey.

Remembrancer of Legal Affairs.

U.O. to M.D. No. 5151 dated the 31st March 1951.

SSM / 24/7/55.

Office of the R.L.A.

The question for consideration in this file is whether the order passed by the Nawab of Janjira on 21-2-1948, bestowing the Inam village of Wadavli on Sidi Abdul Quadar Khanzada to be enjoyed from generation to generation should be recognised or repudiated. The R.L.A. is requested to advise what the legal position is and whether the order of the Nawab can be repudiated.

2. The village Wadavali was originally a Saranjam Inam village of Class I; but owing to strained relations between the Ruler and the late Siddi Dawood (the father of the applicant in this case), the Ruler by his order dated 21-6-1919 (copy at pages 23-25 of File II) cancelled the hereditary nature of the Inam and ordered that the village should be continued in favour of Siddi Dawood only during his life time. After the death of Siddi Dawood in 1945, his son S.S. Q. Khanzada (the applicant in this case) applied to the Nawab for the restoration of the village. The necessary inquiries were made by the Dewan of the State and the papers were placed before the Nawab with his recommendations on 20-2-1947. The Nawab passed his orders exactly after a year on 21-2-1948 but about 2½ months before integr ation. By that order the village in question has been directed to be continued hereditarily in Inam since the date of the death of Siddi Dawood. The possession of the village has not been restored to the applicant. The agreement of merger was signed by the Ruler on 3-4-19 and the intergration took place on 1-5-19

3. After cession of a territory the only enforceable rights against the new sovereign are those conferred by him after cession either by agreement, expressor implied, or by legislation. (Secretary of State for India vs. Bai Rajbai, ILL.R. 39 Bom. 615, 48 Bom. D. 13, Bom. L.R. 235). This principal applies to the tenure on which lands are held or grants made by the former Ruler. If the State Government in the exercise of its sovereign rights declines to recognise the rights conferred by the Nawab's order dated 21-2-1948 such act would be an act of State and the Courts of law would have no jurisdiction; and no suit would lie for enforcement of such a right.

4. Apart form this legal position, it appears that the act of the Ruler of Janjira in regranting the village was not bonafide. As a matter of policy the Government of India has also ruled that a State Government is not bount to recognise any act of such Ruler, if it is mala fide (see Government of India's letter No. D.ter7-Econ/50, dated the 20th/22nd January 1951.) In this connection attention is invited to the report of the Collector of Kolaba at page 47 ante. As pointed out therein, there was a sort of political agitation in Janjira State from the end of 1947 till the beginning of February 1948. The agitation was directed towards the establishment of a popular responsible Government. An announcement regarding establishment of responsible Government was made on 29-1-1948 and a popular Ministry was constituted on 4-2-1948. In the meanwhile there was some armed agitation too as a result of which law and order was handed over to the Government of Bombay. Them move for the merger of the State

State was started on 26-1-1948 and on 20-2-1948 the Praja Parishad decided in favour of merger. The popular Ministry resigned on 2-3-1948 and the Administration was taken over by Bombay Government on 3-3-1948. The agreement of merger was signed by the Nawab on 3-4-1948; and the State integrated with Bombay on 1-5-1948. All these facts go to show that the order was passed hastily by the Nawab on 21-2-1948 obviously in anticipation of the merger agreement. The position was clear on that day that the administration of the State would pass into the hands of the people. This is further supported by the fact that the Deccan States Rulers had decided at the conference held on 19th February 1948 in favour of merger. The applicant S.A.Q.Khanzada and the Nawab of Janjira had a common ancestor in Sidi Ibrahim, the grand-father of the Ruler, who apparently preferred that rather than the village going under the control of the Government of India it had better be awarded as Inam to be continued from generation to generation in the collateral line. The delay in passing the order by the Nawab cannot be construed in favour of the order being bona fide as such delay cuts both ways. In these circumstances there appear to be sufficient grounds to counclude that the order of the Nawab dated 21-2-1948 was not bona fide. In that case there would be no objection to the Government of Bombay Repudiating the same.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 4672, dated the 22nd March 1951.

SSM / 25/7/56.

Legal Department.

The view taken by the Post Master General is correct.

2. Under article 1 of the merger agreement between the Ruler of the Cambay State and the Governor General of India, the Ruler ceded to the Dominion Government full and exclusive authority, jurisdiction and powers for the and in relation to the Governance of the State and agreed to transfer the administration of the State to the Dominion Government; whereafter the Dominion Government became competent to exercise the said powers, authority and jurisdiction in such manner and through such agency as it might think fit. Consequently, after the merger agreement all the property of the Cambay State vested in the Dominion Government. Under para 5, sub-para (1) of the States Merger (Governor's Province) Order, 1949, all property wherever situate, which immediately before the appointed day is vested in the Dominion Government for the purposes of the Governance of a merged State, shall, as from that day, vest in the Government of the absorbing Province unless the purposes for which the property is held immediately before that day are Central purposes. It is true that before merger the building was rented by the Ruler of Cambay to the Central Government for the use of the Indian Posts & Telegraphs Department; but after the merger the relationship of landlord and tenant disappeared and the building vested in the Central Government for the Governance of the Cambay State for the use of the Indian Posts & Telegraphs Department. The Indian Posts and Telegraphs Department being a Central purpose, the building vested in the Central Government by virtue of para 5, sub-para (1) of the States Merger (~~Government~~ Governor's

Provinces) Order, 1949. The Bombay State Government will have, therefore, on claim over the building.

Renem Additional Secretary to Government.

U.A. to P. & S.D. No. 5383 dated the 4th April 1951.

SSM / 25/7/56.

Office of the R.L.A.

The Sangli W.P.S. Act, 1940, is not a general Act but provides for th managment of a single private religious trust. The Bombay Public Trusts Registration Act, 1935, and the Charitable and Religious Trust Act, 1920. which deal with public and not private trusts cannot, in my opinion, be regarded as corresponding laws. Therefore, though not specifically mentioned in the Fifth Schedule I think it must be taken to have been continued and treated as still operative.

Remembrancer of Legal Affairs.

U.R. to L. & H.D. No. 149, dated the 3rd Jan. 1951.

SSM / 25/7/56.

Liability for privy purse of the Thakore of Pethapur States Merger (Governor's Provinces) Order, ~~order~~ 1949-para. 7(1). Constitution of India Act. 291(1)

It is true that in Secretary of State vs. ~~Bai Rajbai,~~ (42 Bai Rajbai, (42 Indian Appeal, 229) the Privy Council has held that on a change of sovereignty the inhabitants of the ceding States cannot carry on under the new regime the legal rights which they may have enjoyed under the old; and that the only legally enforceable rights they can have as against their new sovereign are those and only those which that new sovereign by agreement express or implied by legislation chooses to confer upon them. But paragraph 7, sub-para. (1) of the States Merger (Governor's Provinces) Order, 2949 provides: "All liabilities in respect of such loans, gurantees as and other financial obligations of the Dominion Government as arise out of the governance of a merged State including any particular liability for the payment of any sums to the Ruler of the merged State on account of his privy purse or to other persons in the merged State on account of political pensions and the like, shal as from the appointed day, be liablities of the absorbing province, unless the loan, guarantee or other financial obligation is relatable to Central pruposes." The merger agreement between the Thakore of Pethapur taluka and the Maharaja of Baroda guarantees the payment of privy purse of Rs. 25000/- annually in two instalments in consideration of which the Thakore agreed to the merger of the Pethapur taluka in the Baroda State. This merger agreement appears to be in the nature of a political agreement guaranteeing the p

ment

payment of political pension called privy purse to the Thakore and this liablity appears to be saved by paragraph 7 sub-para. (1) of the States Merger (Governor's Provinces) Order, 1949. The question as to who should bear this liability i.e. whether the Central Government or the Provincial Government, is a matter to be settled between these two Governments. Under article 291, sub-article (1) of the Consitution, the privy purse sums payable to the Rulers under any convenant or agreement entered into before the commencement of this Constitution has been charged on and paid out of the Consolidated Fund of India. This article appears to contemplate only direct agreements between the Rulers of the Indian States and the Government of the Dominion of India. In the present case the agreement under which the Thakore of Pethapur taluka claims the privy purse is not an agreement of this kin. Consequently, article 291 will have no application. Under paragraph 7, sub-para (1) of the States Merger (Governor's Provinces) Order, 1949 the liability will have to be borne by the absorbing Province "unless such financial obligation is relatable to Central pruposes." Consequently, it appears that the liability to implement the merger agreement between the Thakore of Pethpur taluka and the Ruler of Baroda would be on the Bombay State Government. However, if the Pethapur taluka had not merged in the Baroda State the merger agreement between the Thakore of that taluka and the Central Government would have been essential and the Thakore would have enjoyed the similar right to the privy purse

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purse as has been enjoyed by the Rulers of the other States. In the circumstances the Bombay Government may write to the Central Government pressing them to take over the liability of the privy purse under the merger agreement between the Thakore of Pethapur and the Ruler of Baroda.

Remembrancer of Legal Affairs.

U.O. to P.& S.D. No. 5635, dated the 9th April 1951.

SSM / 25/7/56.

Office of the R.L.A.

The question referred to the R.L. for opinion is whether the Hyderabad Government can now issue an order under article 8 of the India and Hyderabad (Exchange of Enclaves) order 1950 for the transfer of pending proceedings on the lines of the order passed by the Government of Bombay in Government Notification No. 2755/46-F dated 3-4-1950 The answer is in the negative in view of clause (4) of article 8. Under that clause no order can be made under article 8 after the expiration of six months from the appointed day, that is, from the 25th January 1950. From the letter of the Government of Hyderabad dated 28-3-1951 at pages 93-94 ante, it appears that theat Government has realised this position and are contemplating enactment of a separate Act under which a similar order for transfer of pending proceedings will be made by them.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 6223, dated the 17th April 1951.

SSM / 25/7/56.

Office of the R.L.A.

From clause 5 of the Trust Deed dated 13th April 1928, it appears that the sons of the late Prince Dhairyashilrao are entitled to the income of the one fourth of the Trust Fund in equal shares per stirps during their life time. Had Vijit Raje left a natural born male issue behind him, that issue would have been entitled to the share of Shri Vijit Raje in the Fund. There is no provision in clause 5 under which the income paid to Shri Vijit Raje can be distributed among his brothers, namely (1) Shri Ashok Raje and (2) Nala Raje. In the circumstances, it appears that according to the provisions of clause 8 of the Trust Deed the trustees are to hold the share of Shri Vijit Raje in trust absolutely for the person who at the date of death of Vijit Raje occupies the Gadi of the Gaekwads of Baroda.

2. It appears that the question of appointing new trustees on the said Corporation is under the consideration of the Government and that Government intend to amend the Royal Family Trust Fund Act for the same.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 6585, dated the 25th April 1951.

SSM / 25/7/56.

Office of the R.L.,

The order passed by the Maharaja of Baroda on 3-2-1948 is as follows:-

"(i) M/S. Birla Brothers Ltd., be given a Prospecting licence under the Mining Act, waiving the sections 16, 17, 24, 30, 45, 48 and Schedule Kha, Ga, and Gha of section 18 of the rules as applied to the Baroda State for carrying out exploration of mining work for mineral oil for the whole State as per Annexure A of their application with the modification that instead of a flat lease of 100 years, it should be given for a period of 50 years with an option of renewal for another 50 years with revised terms that may be agreed upon by the parties.

~~(ii) An~~

(ii) An Agreement should be entered into with Messers. Birla Brothers Ltd., on behalf of the Government of Baroda, in this connection. The draft of the agreement should be got approved by the Legal Remembrancer.

(iii) The Director of Industries is empowered ~~to~~ to transfer the Licence in the name of the new company to be floated by Messers. Birla Brothers Ltd."

2. This order was communicated to Messers. Birla Brothers Ltd., and thereupon the Legal Remembrancer of Baroda took time to finalise the draft. The draft was sent more than once to Birla Brothers. Finally by their letter dated 15-3-1949 they returned the draft agreement with certain suggestions and inquired when their representative shold come to execute it. It is at that stage that owing to the impending integration it was decided that the draft should not be finalised and executed.

3. At the ~~same~~ time when he made the order, the Maharaja still retained the inherent executive power necessary for the purpose of sanctioning an agreement. However, under section 49(b) of the Government of Baroda Act, 1940, all contracts and assurances of property made in the exercise of the

of the executive authority of the State shall executed by such persons and in such manner as His Highness may direct or authorise. The execution of the contract by the proper authority and in the prescribed manner was thus a condition precedent to the conclusion of the contract; and unless so executed, there would ordinarily be no binding contract. It is true that a contract may be made by letters, and th t the mere reference in them to a formal contract will not prevent their constituting a binding bargain. However, the protracted negotiations in this case, extending over a year, after the Maharaja's order was communicated to Birla Brothers show that the sanction was subject to the preparation and approval of a formal contract. It may not be supposed that because persons wish to have a formal agreement drawn up, that therefore they cannot be bound by a previous agreement, if it is clear that such an agreement was made; but the circumstance that the parties do intend a subsequent agreement to be made is strong evidence to show that they did not intend the previous negotiations to amount to an agreement. The second paragraph of the Maharaja's order that the agreement should be entered, and that the draft should be got approved by the Legal Remembrancer can, in the context of the constitutional requirement of section 49(b) and the ~~negotations~~ registrations thereafter be taken to mean th t the agreement was subject to the preparation and a proval of a formal contract. In that view, it would seem that no Legal contract was made on behalf of the Baroda State.

4. Even assuming that a binding contract was made, it must be pointed out that in the Administration of Baroda State Order, no provision has been made to save agreements. Attention is- invited to R.L.A's opinion No. 29-P. Confl. dated 8-10-1949 and to the

to the case of Syed Asrar Ahmed vs. The Dargah Committee Ajmer (49 Bom. L.R. p. 235). There is greater reason to hold that the agreement should not be treated binding upon this Government, because the concessions intended to be given by the agreement were themselves not only not authorised but were opposed to the provisions and the spirit of the Mining Act as it prevailed in Baroda and are very much opposed to the policy and the provisions of the law prevailing in the Province now.

5. Both in law and on grounds of public policy the agreement would not, therefore, be binding upon this Government.

Remembrancer of Legal Affairs.

U.R. to D.D. No. 5035, dated the 13th April 1950.

SSM / 25/7/56.

Office of the R.L.

The question of fixing the status of the Kolhapur Jahagirdars is at present under the consideration of the Government of India. When that problem is solved, an agreement will probably be entered into by the Jahagirdars with the Government of India. The question raised in this file, viz. whether the agreement between the Jahagirdar of Vishalgad and Shri Vishnu Yeshwant Sontakke is binding on the Government of Bombay or not should therefore be kept pending till the question of the status of these Jahagirdars is decided. The Agriculture and Forest Department may then, if necessary, refer the point to the Remembrancer of Legal Affairs through the Political and Services Department.

Remembrancer of Legal Affairs

U.R. to A. & F.D. No. 7772, dated the 8th June, 1950.

Office of the R.L.A.

Agreements between the Rulers of Sirohi and Danta States with M/s. Merwanji Rustamji and Co. re. transport of passengers. Whether they are binding on Government.

The agreements entered into by Messrs. Merwanji Rustamji and Company with the Sirohi and Danta States have not been granted under the provisions of any law relating to motor vehicles; and not only give to the Company the sole right to carry passengers between Abu Road and Shri Ambaji, but also give them the right to levy and collect a tax in the nature of pilgrim tax. As in the case of the license granted by the Idar State the monopoly in favour of Messrs. Merwanji and Company seems to have been granted in exercise of the prerogative rights of the Rulers of the two States. As pointed out by the R.L.A. in a number of opinions agreements entered into with the acceding States would not be binding on Government unless such agreements are specifically saved and recognised either by agreement, express or implied, or by legislation. So far as the present case is concerned it is presumed there is no such recognition, express or implied. In that case the Government of Bombay is not in law bound to recognise the monopoly granted by the Sirohi and Danta States.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 12364, dated the 29th August 1950.

SSM / 25/7/56.

Liability for payment of pension of servant in the service of the Thakore of Kadoli.

The relevant terms and conditions of the agreement (Type III) executed by Thakore read as follows :-

"(a) All rights, authority and jurisdiction belonging to me which appertain or are incidental to the government of the Taluka shall vest in the Government of Bombay.

(b) All my duties and obligations pertaining or incidental to the Government of the Taluka shall also devolve on the Government of Bombay.

The question for consideration is whether the expression "obligations pertaining or incidental to the government of the Taluka" include the obligation to pay pensions and to continue in employment the persons who were in service at the time of the merger. The obligation, be it noted, must appertain or must be incidental to the government of the Taluka. The functions of Government are broadly classified into two groups as the Constitutent Functions and the Ministrant Functions, under the former head being included generally the police functions such as the protection of life, liberty, property, etc., and under the latter the welfare functions such as education, etc. So long as the employee was engaged in the promotion of any of the functions which are comprised in the term "government" in other words, so long as he was engaged in public service, as opposed to the private personal service of the Thakore, the obligation to pay salary or pension for his past services would be an obligation pertaining or incidental to the government of the taluka and that obligation would develve upon the Government of Bombay. Moreover, it would be unjust to deprive

deprive public servants of their legitimate rights and privileges merely because there has been a change of master for which they were in no way responsible. A court would construe the agreement liberally in favour of such public servants and in a manner which would not be oppressive to them. The fact that as in the case of agreements of the type I and II the agreement type III was not supplemented by a collateral letter containing a guarantee on the subject is not sufficient for excluding such guarantee, if it can be reasonably spelt out of the conditions in the agreement ~~itself~~ itself.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 12384, dated the 29th August 1950.

SSM / 25/7/56.

Office of the R.L.A.

Although there is no express clause in the merger agreement for in the collateral letter thereto providing for an obligation on the part of the Ruler to put Government in possession of property which is held to be public property as distinguished from his private property, such obligation impliedly follows from the agreement. The agreement is not a cognizable by municipal courts, as it was made between two sovereign parties; and any claim arising out of that agreement cannot be enforced in the ordinary course of law. It is the duty of the party to the agreement to abide by its terms and to make arrangements for handing over possession of property which he himself admits to be public property, and which has been allowed by him to be in occupation of a third party. If the Ruler declines to abide by the agreement, the matter should be referred to the Ministry of States for suitable action. It would not be feasible to evict the occupant by force; and it is doubtful whether a suit would lie against him for that purpose.

Remembrancer of Legal Affairs.

D.O. No. 13108, dated the 13th September 1950.

Office of the R.

The view taken by the Secretary, Development Department in his note dated 11th March 1950 is correct.

2. It is true that clause (10) of the agreement provides for determination of the rate for sugar-cane after expiry of 6 years, but the period during which the revised rate as determined under clause (10) of the agreement should be operative is uncertain. Besides, this clause has not been resorted to by the parties after the expiry of the first 6 years. Consequently, the right under this clause (10) can be deemed to have been waived by consent of both the parties and this clause would no longer be considered as being operative and binding between the parties. Attention is also invited to the recent order of the Government of India dated 7th October 1950 issued under section 3 of the Essential Supplies (Temporary Powers) Act, 1946. Under clause (3) of this order power is taken to fix in respect of any area the minimum price to be paid by a producer or his agent for sugar cane purchased by him in that area, and under sub-clause (2) no person shall sell or agree to sell sugar-cane to a producer and no producer shall purchase or agree to purchase sugar-cane at a price lower than that notified under this clause. If therefore, the minimum price for sugar-cane is fixed under clause (3) in respect of the area in question clause (10) of the agreement would automatically lapse even if it be considered that it is binding between the parties.

Remembrancer of Legal Affairs.

U.R. to Development Department No. 15212, dated 1st Nov., 1950.

Office of the R. .

Seen and returned.

2. On the merger of the Shirohi State with the Bombay State the right to nominate the two directors on the Abu Road (Shirohi State) Electricity and Industries Coy. Ltd. devolves on the Bombay Government. The question whether the existing nominees of the Shirohi State have been appointed as directors for any particular term or whether they can be replaced before the expiry of their term when they are so continuing etc. can only be ansered by examining the articles and memorandum of association of the Company. Development Department may examine these articles and then decide whether any change in the present nominees is necessary.

Remembrancer of Legal Affairs.

U.O. to D.D. No. 16240, dated the 20th November 1950.

Legal Department.

Bombay Merged States (Laws) Act. 1950.

Section 3(3)(b).

The persons already appointed for the districts under the three Acts, i.e. the Indian Christian Marriages Act, 1872, the Special Marriage Act, 1872 and the Births, Deaths and Marriages Registration Act, 1886, can exercise jurisdiction over the parts of the merged States which have been added to these districts already existing and no separate appointments in respect of these areas would be necessary (see section 3(3)(b) of the Bombay Merged States (Laws) Act, 1950)

Additional Secretary to Government.

U.R. to L.S.G. & P. H.D. No., 3413, dated the 24th February 1951.

SSM / 25/7/56.

Legal Department.

It appears that Her Highness the Senior Maharani Sahiba of Chhota Udepur, to whom the Government of India has sanctioned a monthly allowance of Rs. 4,000/-, is of unsound mind and unable to mangger her own estate and affairs. At the request of Yuvraj Shri Rajendra Sign-Singhji of Rajpipla, the brother of the Maharani Sahiba, the Govennment of India by an orderr dated the 24th February, 1950, has recognized him as 'guardian' (the Manager of the estate and affairs of the said Maharani Sahiba) for the purpose of receiving the said allowance upon the Yuvaraj agreeing to indemnnify the Government of India agninst all claims and demands arising by reasons of such recognition and payment. He has accordingly executed an indemnity bond and the payment of the allowance to the joint account of the Maharani Sahiba and the Yuvaraj has been sanctioned by the Government of India. The Yuvaraj has now requested the Chief Secretary to the Government of Bombay to issu instructions to the National Bank of India Ltd., to allow him to operate the account of Her Highness the Senior Maharani Saheba Kusumkunverba of Chhota Udeput on her behalf. The question raised for the R.L.A.'s consideration is : whether th re is any objection to issueing such instructions to the National Bank of India Ltd., Bombay.

2. The Government of Bombay has no power to issue instructions to the National Bank of India Ltd., to allow the Yuvaraj of Rajpipla to operate the account of the Maharani Sahiba wi

Sahiba with that Bank. Nor would the Bank bound to act on such insturctions. Besides the issue of such instructions may imply the entailment of the liability of this Government to indemnify the National Bank of India Ltd., against all claims and demands arising by reasons of the issue of such instructions. The Bank will, in all probability, ask the Government for an indemnity bond before acting on the instructions. To allow or not to allow the Yuvaraj of Rajpipla to operate the account of the Maharani Sahiba with the National Bank of India Ltd., Bombay, with or without his being appointed a guardian by a proper authority is a matter between him and the National Bank of India Ltd., and Government of Bombay has nothing to do with it. Consequently, the Yuvaraj may be informed that the Government of Bombay cannot issue such instructions and he may settle the matter with the National Bank of India Ltd., Bombay.

Additional Secretary to
Government.

U.H. to P. & G.D. No. 6769, dated the 27th April 1951.

JSM / 25/7/56.

Legal Department.

Sections 2, 3, 4, 10, 12, 13, 14 and 17 of the Vadhiar Bank Act (pp. 153 to 155 ante) clearly show that the Vadhiar Bank Act was enacted by the former Radhanpur State for regulating the business of the Vadhiar Bank. Although the Indian Companies Act, 1913 and the Banking Companies Act have been extended to the merged State of Radhanpur, in view of the special features of the Vadhiar Bank Act, the Vadhiar Bank Act cannot be said to be a law corresponding to either of the said two Acts.

2. A number of merged States had State Banks which were governed by a special law enacted by the respective State. The Kurundwad State (Jr.) had the State Bank of Kurundwad Jr. Ltd. which was governed by the State Bank of Kurundwad (Junior) Act, 1933. In respect of this Act, the Government of Bombay under their letter political and Services Department No. 3198/46-58785-F of 30-11-1949 had made the following proposal to the Government of India :-

"The Kurundwad (Junior) Bank Act is a local enactment of the State which has been continued. to enable Government to realise all the dues as arrears of land revenue with the ultimate object of winding it up. The Act provides that the Indian Companies Act, 1913 shall not apply to it and in view of the peculiar provisions contained in the Act its continuance with certain amendments is very necessary. As matters stand, it is not possible to bring the Bank and its constitution under any existing enactments. If the Government of India agree to continue it by an Act or ordinance, than a draft will be submitted to the Ministry of Law on receipt of your reply."

3. The Government of India have taken the following view :-

"In the opinion of the Government of India the Kurundwad (Junior) Bank Act is not affected by section 5 of the Merged States (Laws) Act, 1949, (LIX of 1949). It cannot also be said to be a law of the State corresponding to the

to the Banking Companies Act, 1949 (X of 1949), which now extends to the territories of the former Kurundwad (Junior) State and therefore it does not seem impossible for the general law and the local law to operate side by side till such time as the Provincial Government's objectives are achieved. I am to add that the Government of India consider that the Banking Companies Act does not apply to the Kurundwad (Junior) Bank as it cannot be wound up under the Indian Companies Act. It is, therefore, not necessary to promulgate any Ordinance or Act of the Legislature in this connection."

4. The view taken by the Government of India would equally apply to the Vadhiar Bank of Radhapur and it can be held that the Vadhiar Bank is still governed by the special law, namely the Vadhiar Bank Act of the former Radhapur State.

5. The view taken by the Register of Companies in paragraph 2 of his note at page 145 ante is correct. According to paragraph 4 of the Administration of the Indian States Order of 2nd June 1948, the powers exercisable by the Ruler of Radhapur State in respect of the said Act are exercisable by the Government of Bombay.

Additional Secretary to Government.

U.H. to D. ., No. 6777, dated the 28th April 1951.

SSM /.27/7/56.

Legal Department.

The view taken by the Saurashtra Government is correct. Under clause 7 of the Provinces and States (Absorption of Enclaves) Order, 1950, all rights, liabilities and obligations, whether arising out of a contract or otherwise, of the Government of a surrendering unit in relation to an enclave, shall, as from the appointed day, be the rights, liabilities and obligations, respectively, of the Government of the absorbing unit. After receipt of the consideration of Rs. 25,001/- by the Saurashtra Government from Shri Chaunilal Chhaganlal in November 1949 the Saurashtra Government was liable to execute a proper sale deed in favour of Shri Chunilal Chhaganlal in respect of the property sold to him. By virtue of clause 7 of the Provinces and States (Absorption of Enclaves) Order, 1950, that liability of Saurashtra Government would now be the liability of the Bombay State Government of the absorbing unit. Government will have, therefore, to execute a sale deed without demanding from the Saurashtra Government Rs. 25,001/- which that Government received from Shri Chunilal. Whether in equity the Bombay Government should or should not receive the whole or part of the sale price is a matter between the two State Government and depending on the general position in regard to such properties situated in the respective enclaves.

Additional Secretary to Government.

U.R. to P. & S.D. No. 5307, dated the 3rd April 1951.

Legal Department.

The question raised for the R.L.A's consideration is whether it is possible to terminate the agreement entered into between the Palanpur Government and Usman Umar Makin of Mecca.

2. In Secretary of State v. Bai Rajbai, 42 Indian Appeals 229, the Privy Council held : "On a change of sovereignty the inhabitants of the ceding States cannot carry on under the regime the legal rights which they may have enjoyed under the old and that the only legally enforceable rights they can have as against the new sovereign are those, and only those, which that new sovereign by agreement express or implied or by legislation chooses to confer upon theme." While conceding this principle of law, the Government of India in their letter Ministry of States No. D. 5347-Econ/50, dated 20th/22nd January 1951, have stated : "While the legal position is as stated in the preceding paragraph, the Government of India do not consider that the State Government should terminate all such agreements (agreements with industrial concerns, banks and other commercial undertakings) forthwith. The general rule of internation law that a change of sovereignty ought not to affect the private property cannot be lightly brushed aside in repudiating the agreements made by the outgoing sovereign. The policy, therefore, which the Government of India have adopted in this respect is not to repudiate the commitments of the Rulers of Merged States, unless they are considered to be ~~anka-fide~~ mala fide extravagent or against public interest; all agreements which are reasonable and bona fide are being continued to

continued the concessions accruing thereunder being limited to a reasonable period not exceeding 10 years or for their sanctioned duration whichever is less." The present agreement between the Palanpur Government and Usman Umar Hakim of Mecca being mainly or primarily for sericulture may fall under the category of agreements contemplated by the aforesaid letter of the Government of India. Considering the nature of the agreement and its terms and conditions, it appears that it would be difficult to hold that the agreement is mala fide and extravagant, Consequently, it would not be possible to terminate this agreement forthwith. The grant is not conditioned by any period. Further, as stated in condition 3 of the grant, it is mainly and primarily for purposes of cultivation of sericulture only and for no other purpose. The Superintending Engineer, North Gujarat Circle, in his letter dated 12th December 1950 at page 59 has stated that although the grantee has made no default or committed no breach of the grant sericulture appears to have filed for want of sufficient supply of water. Since 1947 it appears that the land had not been used for sericulture. No obligation is created under the agreement for the supply of sufficient quantity of water by Government. The grantee seems to have realised the legal position and appears to have requested Government to allow him to dig the tube wells in his own lands and to relieve him of the liability from payment of water rates as per condition 5. In these circumstances, Government may offer him some reasonable terms and modify the agreement suitably by mutual consent. If he fails to accept any reasonable terms offered to him the question of terminating the agreement may be considered.

Additional Secretary to Government.

U.R. to P.W.D. No. 5518, dated the 6th April 1951.

SSM / 25/7/56.

Legal Department.

Claim of licensees of Pethapur Taluka for 13/14th refund duty against Government.

It is true that the licensees under their licences were entitled to receive 13/14ths of duty on ganja and bhang which the Pethapur State was to get from the Bombay Excise Department and these licences were for two years commencing from 1st November 1946 to 31st October 1947 and 1st November 1947 to 31st October 1948. But since the Pethapur State merged in the Baroda State on 1st August 1948 under the merger agreement executed between the Talukdar and the Maharaja of Baroda, the liability under the aforesaid licences would be determined by that merger agreement. Under article 7 thereof, ~~the liability under the aforesaid licences would be determined by that merger agreement. Under~~ the Baroda Government agreed to discharge all the liabilities of the Pethapur taluka to the Government of India and all the remaining liabilities were answerable by the ~~the~~ Thakore Shri personally and not by the Baroda State. Consequently, the right of the licensees upto the date of merger of the Taluka in the Baroda State, i.e. upto 1st August 1948, could be enforced not against the Baroda Government but against the Thakore of Pethapur State personally. If the Baroda Government was not liable to the license s for the duty as stated above, much less could the Bombay Government be ~~is~~ liable after the merger of the Baroda State in the Bombay State. It also appears that after the merger of the Pethapur taluka in the Baroda State a fresh licence for the unexpired period was issued to the licensees without any such liability for duty being included therein. Consequently, these license s could not claim such duty for the preiod from 1st August

August 1948 to 31st October 1948. Besides, even on the general ground that no liability can be enforced against the succeeding State unless such liability was recognised by legislation, or by agreement express or implied, the licensees' claim would not be tenable.

Additional Secretary to Government.

U.R. to R.D. No. 5790, dated the 11th April 1951.

3SM / 26/7/56.

Office of the R.L.A.

It appears from the Cash Assami Barkhali Rules that there are grants -

(i) which are governed by sanads, and

(ii) grants which are governed by special orders of the Maharaja without any sand

These Rules relate to various grants, e.g. grants without service, grants burdened with service, grants for maintaining a horse, and grants for Devasthans. Some of these grants under the Rules are to be continued perpetually; ~~some of these grants under the Rules~~ some to be reduced at each succession and ultimately to be abolished after the 4th or the 5th succession. They also prescribe the order of succession to these grants. These rules relate to grants of cash amounts. These grants are pensions within the meaning of the Pensions Act, 1871. It is true that the said Act has been applied to the merged State of Baroda. But there is nothing in the Cash Assami Rules which is not consistent with the provisions of the said Act. These Rules can be held to be special rules applicable to cash amounts in the merged State of Baroda and are not superseded by the pension rules inforce in the State proper.

~~Hevemb~~
Remembrancer of Legal Affairs.

U.R. to R.D. No. 5497, dated the 5th April 1951.

Sem / 26/7/56.

Office of the R.L.A.

Ordinarily a grant of A Saranjam is looked upon as a political tenure i.e. a tenure created from or dependent upon political considerations, the existance of which is determined by Government. In view of the merger of the State the right of the Ruler of Jath to recover succession nazarana from the Saranjamdar of Umarani should, therefore, have devolved upon the Government of Bombay. But it seems from the correspondence in this file that the arrears of the nazarana have been accepted as the private property of the Ruler. In order to express a definite opinion on the questions raised, the Political & Services Department is, therefore, requested to state under what circumstances this item was treated as the private property of the Ruler and to forward all the relevant papers relating thereto. The Political and Services Department is also requested to forward the file containing the note by the Ruler that the amount should be recovered by Government and paid to him, which not appears to have been deleted subsequently (vide para 3 of p. & S.D. office note at pp. 156-167 ante).

For Remembrancer of Legal Affairs.

U.... to P. & S.... No. 978, dated the 16th January, 1951.

SCM / 26/7/56.

Legal Department.

Section 4 of the Bombay Revenue Jurisdiction Act and section 4 of the Pensions Act which have been relied upon by the Raja of Jath to prove that the Civil Court will have no jurisdiction to entertain his claim against the Saranjamdar for the nazarana do not appear to be applicable. Section 4 of the Bombay Revenue Jurisdiction Act bars jurisdiction of the Civil Court to entertain claims against Government relating to lands held under treaty or land s granted or held as saranjam or other political tenure. Any suit of the ruler of Jath against the Inamdar would not be a claim against Government nor would it relate to lands held as Saranjam within the meaning of section 4. Such suit would not also be one relating to the grant of land revenue within the meaning of section 4 of the Pensions Act.

2. Nazarana, as it name inplies, is in the natureof a tribute claimed by the sovereign authority and such nazarana can be claimed by the authority exercising such power in respect of saranjam. Although in the present case the the nazarana became recoverable long ago, it was not recovered before the merger of the Jath State in the Bombay State. Consequently that right to levy and recovery the nazarana devolved on the Bombay Government. After merger the ruler of Jath no longer remined the sovereign authority who could recover the nazarana in the present case. Hence any suit by him to claim the nazarana at this stage would not succeed in the Civil Court, since he has ceased to be an authority who could claim the nazarana. If the

If the nazarana can at all be recovered, it could be recovered only by the Bombay State.

3. It is true that the nazarana dues have been conceded by Government as private property of the Chief and the note attached by the Rajasaheb of Jath to the inventory of his private property that the nazarana should be recovered by Government and paid to him as his private property has been deleted by Government. But this seems to have been done on the impression that the nazarana, being conceded as the private property of the ~~nazarana~~ Rajasaheb, was no longer consituted Government dues and consequently Government could not recover it. It appeans that this impression, though apperently correct, was not based on any valid legal grounds. As stated above, nazarana could be recovered only by the sovereign authority and as such the Rajasaheb of Jath Could not, after merger recover the nazarana. The right to recover the nazarana devolved on the Bombay State and that authority alone could recover it. It appears, therefore, that there would be no legal objection to Government recovering the nazarana from the saranjamdar and paying it to the Raja of Jath and the agreement between the Government and the Raja of Jath that the nazarana was the property of the Raja of Jath would not bar Government's claim for the recovery. Steps may, therefore, be taken to recover the nazarana under section 187 of the Bombay Land Revenue Code.

Additional Secretary to Government

U-R. to P. & S.D., No. 7226, dated the 7th May 1951.

Office of the A.L.A

It is true that under paragraph 7 of the collateral letter, the contents of which are regarded as part of the merger agreement, Government has given an undertaking not to question any order passed or action taken by the Ruler before the date of making over the administration unless the order was passed or action taken after the 1st April 1948 and is considered by the Government of India to be palpably unjust or unreasonable. But this letter by itself will not help Shri Contractor and will not bestow any right on him which he can enforce in a court of law. In this connection attention is invited to paragraph 2 of the Government of India, Ministry of States, letter No. D. 5347-Coon/50, dated 20th/22nd January 1951, in which the Government of India "even if treaties contain stipulations that certain inhabitants shall have certain rights that does not give a right to them (the inhabitants) to enforce those rights in municipal courts, such rights remaining only with the high contracting parties. If, therefore, notwithstanding the express provision made in the covenant for the formation of the Union, the State Governments repudiated the duties, obligations and the liabilities arising out of the agreements made by the covenanting States, the aggrieved party will not have a remedy in a court of law." It will be seen therefore that even in spite of paragraph 7 of the collateral letter Shri Contractor cannot claim the benefit of the concession under the Maharaja's order dated 6-4-1944.

I have very clearly stated the legal position in respect of such agreement - As stated by Govt. of India

2. Under the Maharaja's order Shri Contractor not only gets the benefit of being supplied electricity at half the rates, but there is a provision in that orde- th t for a period of 30 years nobody else will be allowe1 to construct a cinema house in the Town of .ajpipla. It may be that there were sufficient reasons in 1944 for granting such concessions but in view of the policyadpted adopted by the Government of India (vide paragraph 3 of their letter referred to above) it is for the administrative Departments to consider whether the concession of supplying electricity at half the rates should not be continued for some time more under a fresh agreement. The monopoly of running the theatre for a period of thirty years is however contrary to law and as being opposed to public policy.

3. Paragraph 7 of the Maharaja's order referred to in the P. & S.D. office note would not be helpful as that paragraph refers to the observance of the rules and regulations pertaining to the Cinematograph Act.

Remembrancer of Legal Affairs.

U.K. to P. & S.D. No. 8081, dated the 22nd May 1951.

SSA / 26/7/56.

Legal Department.

There is no substance in any of the contentions raised by Shri G.Y. Desai in the notice of suit given by him. Under condition 9 of the conditions of sale at slip 'A' the bidder is liable for the ~~conditions or~~ damage done to the reserved trees and this liability is independent of the ~~reserved trees and this liability is independent of~~ fulfilment or otherwise of the contract. Consequently, the fact that Shri G.Y.Desai had fulfilled the contract and the deposit amount was returned to him, though proved, would not absolve him from the liability to pay damages under ~~conditions~~ 9 of the conditions of sale. The amount of Rs. 1386-12-0 was recovered from him for the damage done to the reserved trees. This recovery from was made under the orders passed by the Diwan of Sangli in 1948, which was ultimately confirmed by the Revenue Tribunal of Sangli. It is, therefore, clear that the recovery was lawful and Shri Desai has no valid claim for the return of the amount. The suit, if filed, would be defensible not only on merits, but even on the ground of limitation.

Additional Secretary to Government

U.R. to A.& F.D. No. 7924, dated the 19th May 1951.

SSI / 26/7/56.